

Remarks:

Claims 1-11 are pending in the subject application. Claims 1, 3-9, and 11 have been amended. Claim 2 has been cancelled. Claims 12-15 are new. No new matter has been added.

Claim Rejections – 35 USC §112:

Claims 1-11 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states that “claim 1 lacks a clear frame of reference for “rearward portion”, which appears to be redundant to “rearward end”. The Examiner further states that “rearward depends on the position of the observer, not on structural limitations.” The Applicants have amended claim 1 to replace “rearward” with “second”. More specifically, claim 1 has been amended to recite, in part, that “each side bracket includes a first end in spaced relationship to a second end”. Additionally, Figures 1 and 5-7 and paragraphs [0030], [0034], and [0038] have been amended to include the appropriate language and reference numerals. No new matter has been added. Accordingly, the rejection of claim 1 is overcome and should be withdrawn.

The Examiner rejected claim 4 as lacking clear antecedent. The Examiner states that “[t]he side bracket 14,15 has already been claimed and the function of “can be pivoted” is already claimed in claim 1.” The Applicants have amended claim 4 to recite “wherein the side bracket”. Accordingly, the rejection of claim 4 is overcome and should be withdrawn.

The Examiner rejected claim 5 as being incorrect. The Examiner states that “[t]he flexible roof panel 4 contact the bracket in figure 4, with the open roof.” The Applicants have amended claim 5 to correct this language. As amended, claim 5 recites “at a spacing from the attachment device.” [emphasis added]. Accordingly, the rejection of claim 5 is overcome and should be withdrawn.

Claim Rejections – 35 USC §102:

Claims 1-6 and 9-11 are rejected under 35 USC §102(b) as being anticipated by US Patent No 4,708,389 to Maebayashi et al.

With respect to claim 1, the Examiner states that “Maebayashi et al. discloses (Fig. 4C) a top for a convertible vehicle with a flexible roof panel (15), which is attached to an arrangement of convertible-top rods (13) and, in its rear area, to an attachment device (61,62) of the vehicle body (56), in which a clamping device (31/32), acting on the flexible roof panel in the region of its attachment to the vehicle body in the closed state of the convertible top, is provided, said clamping device being designed with at least one bracket that forces the flexible roof panel in the closed state of the convertible top against an auto-body closure seal (63), characterized in that the at least one bracket is pivotable with its rearward end around an articulation (33 or 9a) attached to the vehicle body via members 32 and 32a and 9.”

For a rejection grounded in anticipation under §102 to be proper, every element and limitation recited in the rejected claim(s) must be found in the cited §102 reference. *See MPEP § 2131.* “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Id.*, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). *See also, In re Paulsen*, 30 F.3d 1475 (Fed. Cir. 1994). The MPEP restricts the prior art that may be cited by an Examiner in making a §102(b) rejection to those where the “identical invention [is] shown in as complete detail as is contained in the ... [rejected] claim.” *Id.*, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Claim 1 has been amended to include the limitations of claim 2 and other limitations. Amended claim 1 recites, in part, the “clamping device including a side bracket assigned to each side of the vehicle; wherein each side bracket includes a first end in spaced relationship to a second end...wherein the side bracket is pivotable at the second end around a pivot point that is attached to the vehicle body at the second end of the side bracket such that the second end of the side bracket and the pivot point are at the same height in the open state as in the closed state.” [emphasis added].

Claim 13 has been added. Claim 13 includes the limitations of original claim 1 and other limitations to recite, in part, that “the clamping device being designed with at least one bracket...wherein the clamping device comprises a single bracket extending essentially over the

vehicle width and being pivotably attached to the vehicle body at a pair of pivot points such that the pivot points are at the same height in the open state as in the closed state.” [emphasis added].

While Maebayashi et al. discloses a clamping device that includes a side bracket having a first end spaced from a second end where the second end is pivotable around a pivot point 33, Maebayashi et al. fails to disclose that the pivot point 33 and the second end of the side bracket of the clamping device are attached to the vehicle body such that the second end of the side bracket and the pivot point remain at the same height in the open state as in the closed state. Instead, referring to Figure 5, the second ends of the side bracket and the pivot points 33 change position within the vehicle when moving from the closed state to the open state. Accordingly, the claimed invention is not anticipated by Maebayashi et al. and claims 1 and 12 are allowable for at least this reason. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 6 has been amended to depend from allowable claim 12 and is also allowable for at least the same reason that claim 12 is allowable. Claims 3-6, which depend from allowable claim 1, and claims 9-11, which depend from allowable claim 12, are also allowable for at least the same reasons that claims 1 and 12 are allowable and the rejections should be withdrawn.

Claim Rejections – 35 USC §103:

Claims 7 and 8 are rejected under 35 USC §103(a) as being unpatentable over Maebayashi et al. The Examiner states that “[a]s to claim 7 and 8, it is common knowledge for convertible tops to have drive devices (one or more) that are connected to the convertible top linkages.”

As stated above, the Applicants have amended claim 1 to overcome the rejections and added independent claim 12. Additionally claim 7 has been amended to depend from allowable claim 12. Accordingly, claim 7 is allowable for at least the same reason that claim 12 is allowable and claim 8 is allowable for at least the same reason that claim 1 is allowable. Therefore, the rejection of claims 7 and 8 is moot and should be withdrawn.

Conclusion

All rejections and objections having been addressed, it is therefore respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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